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February 7, 2017

Hon. Ajit Pai, Chairman
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Dear Chairman Pai:

I am writing to request information regarding the FCC's policies and practices with respect to discharging the agency's responsibility for protecting the privacy of communications pursuant to the Communications Assistance for Law Enforcement Act (CALEA), *Pub. L. No. 103-414, 108 Stat. 4279, 47 U.S.C. §1001-1010*.

CALEA prohibits telecommunications carriers from disclosing customer information to law enforcement agencies unless they have legal authorization to do so. See 47 U.S.C. § 229. It has come to my attention, however, that there is substantial publicly available evidence suggesting that carriers have turned over call identifying information to the National Security Agency (NSA) and received fees for providing this information. *See, e.g.,* Unclassified Report on the President's Surveillance Program prepared by the Offices of the Inspectors General of the Department of Defense, Department of Justice, CIA, NSA, and Office of the Director of National Intelligence submitted to Congress in July 2009; March 2009 Working Draft ST-09-002 of the NSA's Office of the Inspector General, first published by The Guardian in June 2013; and "AT&T Helped U.S. Spy on Internet on a Vast Scale," New York Times, August 16, 2015.

During its review of the AT&T-DirecTV merger, the FCC was made aware, but did not act upon, credible allegations that AT&T violated customer privacy by improperly disclosing customer information to the NSA. Further, the FCC

declined to include in its order approving the merger any provisions requiring the new entity to ensure that consumer privacy is protected. The failure to include such conditions raises concerns as to whether the FCC is adequately protecting the privacy rights of Americans regarding their communications pursuant as required by the CALEA.

These issues continue to be important as the Congress works to develop policy that balances the protection of individual privacy and the interests of law enforcement in obtaining access to information, including encrypted communications, in furtherance of its investigative processes. Accordingly, I am requesting to meet with you to discuss this subject in greater detail and to learn how the FCC is ensuring compliance by regulated carriers with CALEA's requirement that customer privacy be protected.

Thank you for your immediate attention to this request. If you have questions or need further information, contact me through my Chief of Staff, Glenn Rushing, at Glenn.Rushing@mail.house.gov or 202-225-3816.

Very truly yours,

A handwritten signature in blue ink, reading "Sheila Jackson Lee". The signature is fluid and cursive, with the first name "Sheila" being the most prominent.

Sheila Jackson Lee
MEMBER OF CONGRESS



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

May 8, 2017

The Honorable Sheila Jackson Lee
U.S. House of Representatives
2187 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Jackson Lee:

Thank you for your letter concerning the Communications Assistance for Law Enforcement Act (CALEA).

CALEA requires that a telecommunications carrier ensure that its equipment, facilities, or services are capable of expeditiously isolating the content, or information identifying the origin and destination of targeted communications, and transmitting such information to law enforcement agencies, pursuant to a lawful authorization. Such actions must be conducted unobtrusively, so that targets are not made aware of the interception, and in a manner that does not compromise the privacy and security of other communications.

Although CALEA requires carriers to ensure that only information subject to a court order or other lawful authorization may be made available for collection by the government, it does not provide the Commission any authority to review the sufficiency of such order or authorities. Communications providers must determine their obligations when presented with such orders and authorities. Ultimately, the judiciary is responsible for determining the validity of orders or other legal authorizations used by law enforcement to compel carriers to assist the government with surveillance. These determinations can be and have been challenged in civil suits.¹

With respect to your concerns regarding the AT&T-DIRECTV merger, the Commission concluded in its order approving the transaction that the privacy-related allegations were not related to the transaction under review and did not provide a basis for questioning AT&T's character qualifications.²

I appreciate your interest in this matter and would welcome the opportunity to discuss it with you or to have my staff brief your staff on the issue. Please let me know if I can be of any further assistance.

Sincerely,

Ajit V. Pai

P.S. Congresswoman, thanks again for your letter! I look forward to working with you.

¹ See, e.g., *In re Nat'l Sec. Agency Telecoms. Records Litig.* (*Hepting v. AT&T Corp.*), 671 F.3d 881 (9th Cir. 2011), cert. denied, *Hepting v. AT&T Corp.*, 113 S. Ct. 421 (2012); *Jewel v. NSA*, 673 F.3d 902 (9th Cir. 2011); *Obama v. Klayman*, 800 F.3d 559 (D.C. Cir. 2015).

² *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9149-50, paras. 41-44 (2015) (*AT&T-DIRECTV Order*).